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Attorneys for J.D. Moore, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FRANK PICKLE,)	Case No. CV 18-00029-H-BMM-JTJ
)	
Plaintiff,)	Honorable John T. Johnston
vs.)	
)	AFFIDAVIT OF THOMAS D.
DR. KOHUT, ET AL.,)	FOWLKES, M.D.
)	
Defendants.)	

STATE OF MISSISSIPPI)
) ss.:
County of Lafayette)

I, Thomas D. Fowlkes, M.D., being first duly sworn depose and state as follows:

1. I am over the age of 18, am under no disability, am competent to testify, and if called to testify in the above captioned matter, would testify as

follows:

2. I am a medical doctor licensed to practice in the State of Mississippi.

3. I received my B.S. from Rhodes College and my M.D. from the University of Tennessee Medical School.

4. I have been practicing medicine since 1989 and have been the Medical Director at the Lafayette County (MS) Detention Center since 1998. I have also been a Medical consultant for the Third Circuit (MS) Judicial District Drug Court since 2011.

5. I am a Certified Correctional Healthcare Professional and have more than twenty (20) years of experience in the practice of Correctional Medicine. I also am Board Certified in both Emergency and Addiction Medicine. A copy of my current *curriculum vitae* is attached to this affidavit as Exhibit A.

6. I have reviewed the following in connection with this matter:

- a. Complaint
- b. Montana State Prison Medical Records
- c. Lewiston Infirmary Medical Records
- d. Main Prison File for Frank G. Pickle
- e. Mini File for Frank G. Pickle
- f. Grievances for Frank G. Pickle

7. The opinions expressed in this affidavit are based upon my education, training, practice of medicine, and review of Mr. Pickle's medical and prison records described above. I hold the following opinions to a reasonable degree of medical certainty.

8. J.D. Moore, M.D.'s, treatment of Mr. Pickle's medical needs was medically appropriate, reasonable, and within the standard of care. Dr. Moore's chosen courses of treatment for Mr. Pickle while Mr. Pickle was incarcerated at the Lewistown Infirmary were medically acceptable and appropriate, did not result in any risk of medical harm to Mr. Pickle, and did not unnecessarily cause pain or injury to Mr. Pickle.

9. In particular, Dr. Moore's treatment of Mr. Pickle's GERD/heartburn, pain, left hip, left knee, and bladder was medically appropriate, reasonable, and within the standard of care.

10. Mr. Pickle's Lewistown medical records do not reflect any complaints or reports of pain that were not treated by Dr. Moore in a medically appropriate and reasonable manner.

11. Dr. Moore's treatment of any pain reported by Mr. Pickle was medically appropriate, reasonable, and within the standard of care.

12. Dr. Moore's decision to prescribe Acetaminophen and Ibuprofen to treat Mr. Pickle's pain was medically appropriate, reasonable, and within the standard of care.

13. Mr. Pickle's medical records reflect that he declined medication, including pain management medication, on multiple occasions.

14. Mr. Pickle's medical records reflect that pain management medication

was available to Mr. Pickle as needed and on request throughout the time he was treated by Dr. Moore, and that Dr. Moore ordered additional pain management treatments when necessary.

15. Mr. Pickle's medical records reflect that he was diagnosed with GERD/heartburn. Dr. Moore's treatment of Mr. Pickle's GERD/heartburn was medically appropriate, reasonable, and within the standard of care.

16. Dr. Moore's decision to discontinue Mr. Pickle's Omeprazole ("Prilosec") prescription and, in the alternative, prescribe Pantoprazole ("Protonix") to treat Mr. Pickle's GERD/heartburn was medically appropriate, reasonable, and within the standard of care.

17. Mr. Pickle's medical records do not reflect that a left knee replacement surgery was medically appropriate or recommended, and Mr. Pickle's medical records do not reflect significant reports of pain or unmanaged pain of the left knee.

18. Dr. Moore's treatment of Mr. Pickle's left knee was medically appropriate, reasonable, and within the standard of care.

19. Dr. Moore's treatment of Mr. Pickle's left hip was medically appropriate, reasonable, and within the standard of care.

20. Dr. Moore's opinion that Mr. Pickle was not a candidate for left hip replacement surgery and that left hip replacement surgery was contraindicated for

Mr. Pickle due to Mr. Pickle's lack of activity, minimal use of pain medications, and lack of effort to stand, walk, or rehabilitate himself was medically appropriate, reasonable, and within the standard of care.

21. Mr. Pickle was diagnosed with a neurogenic bladder and had a suprapubic catheter permanently placed in 2015. Dr. Moore's treatment of Mr. Pickle's bladder related issues, including Mr. Pickle's suprapubic catheter, was medically appropriate, reasonable, and within the standard of care.

22. Mr. Pickle's Lewistown Infirmary medical records reflect that Mr. Pickle's suprapubic catheter was treated and cared for in a medically appropriate and reasonable manner, and within the standard of care.

23. Mr. Pickle's medical records do not reflect that bladder reconstruction surgery was medically appropriate, recommended, or possible.

24. Mr. Pickle's Lewistown medical records reflect that Mr. Pickle was seen and/or treated by Dr. Moore, in conjunction with the Lewistown medical staff, more than twenty (20) times between May 2016 and January 2018. Mr. Pickle's Lewistown records further reflect, however, that Mr. Pickle was not seen by Dr. Moore in June 2017.

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Further your affiant sayeth not.

Thomson D. Faulks MD

Thomas D. Fowlkes, M.D.

[illegible]

Subscribed and sworn to before me this 8th day of November, 2019, by
Thomas D. Fowlkes, M.D.



[Notary Signature]

SEAL

Ashley Frye

[Printed Name of Notary]



**Thomas D. Fowlkes, M.D.**

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 P.O. Box 1955
 Oxford, MS 38655
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 tom@drfowlkes.com

SUMMARY OF QUALIFICATIONS

Seasoned Physician Board Certified in both Emergency Medicine and Addiction Medicine and with more than 20 years of practice in Correctional Medicine.

Accomplished expert witness with more than 10 years of experience at both deposition and trial in state and federal courts and before state regulatory bodies on behalf of plaintiffs/prosecutors/state boards as well as defendants in these matters.

Areas of expertise include:

- Correctional Healthcare
- Deaths in Custody
- Drug Abuse and Effects of Addiction
- Drug testing interpretation and effects of substances
- Urgent Care & Emergency Medicine

CERTIFICATIONS

Board certified emergency physician (American Board of Emergency Medicine)- July 1993 - Dec. 2023

Board certified in Addiction Medicine (American Board of Addiction Medicine)- Dec. 2010 - Dec. 2020

Certified Correctional Healthcare Professional - Physician (CCHP-P) - July 2017 - June 2020

Certified Medical Review Officer for Drug/Alcohol Testing (MROCC) - Dec. 2012 - Dec. 2022

Unrestricted license to practice medicine in Mississippi since 1993

PROFESSIONAL EXPERIENCE

1998-Present	Medical Director at Lafayette County (MS) Detention Center, a 140-bed jail facility holding local and federal (US Marshal) detainees. From 1998-2015, as an independent contractor responsible for provision of all medical, nursing, medication and lab services at the facility. Responsible for all these health services as an employee of Lafayette County, MS since 2015
2011- Present	Medical consultant for Third Circuit Judicial District Drug Court, a felony drug court in Oxford, MS under the direction of Administrator Brandon Vance and Judge Andrew Howorth
2007- Present	Prisoner Advocate Member, Institutional Review Board, Division of Research Integrity & Compliance, University of Mississippi
2018- Present	Co-owner and Physician at Right Track Medical Group, an outpatient provider of mental health services in North Mississippi

PROFESSIONAL EXPERIENCE (cont.)

1992-Present	Sole shareholder of Thomas D. Fowlkes, M.D., P.A. Contractor of emergency physician services to acute care facilities and emergency medicine/EMS consultant. Operated correctional medical facility at Lafayette County, MS Detention Center and conducted court ordered mental health, substance abuse & competency evaluations for Chancery Court in Lafayette County. Expert witness & litigation support practice
1999-Present	Served as Deputy Medical Examiner Investigator for Lafayette County MS from 1999-2008 after completing 40-hour Death Investigation Certification Class. Since 2008 I have served as the medical consultant to the Lafayette County Coroner.
2011-Present	Medical Director for A&D Services for Region IV Comm. Mental Health Center. 2011-2014 Detox Services at Tupelo CSU. 2017-Present at Corinth (Part-time)
2019-Present	Medical Director and co-owner of Express Care of Mississippi, LLC, an urgent care center in Cleveland, MS.
2015- 2018	Director of Professional & Medical Relations/Addiction Physician for American Addiction Centers, a nationwide provider of addiction services, at Oxford Treatment Center (formerly The Oxford Centre)
2009- 2017	Owner of a primary care clinic in Oxford, MS. Provider of primary and urgent care and an office-based addiction medicine practice. Until 2015, I practiced as a solo-practitioner then in partnership with a nurse practitioner as Oxford Family Clinic, LLC
2011- 2015	Co-owner and Chief Medical Officer of The Oxford Centre, Inc. a 76-bed CARF accredited detox, residential and outpatient substance abuse treatment facility. Sold to American Addiction Centers, a publicly traded company, in August 2015
2008-2011	Addiction physician for detox and residential unit at Haven House, substance abuse treatment facility in Oxford, MS operated by Region II CMHC (Part-time)
2005-2009	Urgent care physician at Robinsonville (MS) Urgent Care Clinic and part-time physician at the Harrah's Employee Health & Wellness Center
1998-2001	Private practice of Emergency Medicine with Oxford Emergency Group, P.A. Provided emergency physician services to Baptist Memorial Hospital-North Miss. and Tri-Lakes Medical Center
1997-1998	Chief Medical Officer for Rural-Metro Corporation's Mid-South region. Rural-Metro provides ambulance services and fire protection throughout the United States and internationally.
1995-1997	Chief Medical Officer, secretary/treasurer and co-owner of Priority EMS, an ambulance provider in north Mississippi and metropolitan Memphis. Corporation merged with Rural-Metro Corp., a publicly traded company
1992-1994	Private practice of Emergency Medicine as shareholder and officer in Mid-South Emergency Physicians, P.C. Provided emergency department services for St. Joseph Hospital in Memphis, TN

EDUCATION

University of Pittsburgh Residency in Emergency Medicine
Pittsburgh, PA
1989-1992
Selected Chief Resident-1992
Served as medical command & on-scene physician for City of Pittsburgh, Dept. of Public Safety
Served as flight physician for STAT Med-evac helicopter program

University of Tennessee Medical School
Memphis, TN
M.D. 1989
Faculty Medal for Highest GPA
Alpha Omega Alpha Medical Honor Society

Rhodes College
Memphis, TN
B.S. in Psychobiology 1985
EMT with Shelby County Sheriff's Department, Division of Emergency Services
Psychiatric Technician at Memphis Mental Health Institute, an acute care psychiatric hospital

University of the South
Sewanee, TN
1980-1982
Community Volunteer Firefighter
Emergency Medical Technician (EMT-A)

CURRENT MEMBERSHIPS/RECOGNITIONS

American College of Correctional Physicians
Fellow of the American Society of Addiction Medicine
Mississippi Society of Addiction Medicine
North Mississippi Medical Society/Mississippi State Medical Association/American Medical Association

PUBLICATIONS

Fowlkes T. "Shortness of Breath." *Prehospital Systems and Medical Oversight*. 3rd ed. Ed. Kuehl A.
Dubuque: Kendall/Hunt, 2002. 665-671. Print.

Fowlkes T. "Shortness of Breath." *Prehospital Medicine: The Art of On-Line Medical Command*. 1st ed.
Eds. Paris, Roth, Verdile. Maryland Heights: Elsevier, 1996. 101-112. Print.

Fowlkes T, Verdile V. "Managing Gunshot Wounds." *The Journal of Emergency Services*. Vol. 23 (1990):
20-27. Print.

PRESENTATIONS/TEACHING

Instructor for modules on "Health Care Issues," "Responding to Medical Emergencies," and "Responding to Special Needs Inmates" for the *Mississippi State Standards & Training- Corrections Officer Training Course*, September 18 & 19, 2019, at the DeSoto County Sheriff's Department in Hernando, MS

Videotape Presentation on "Reasonable Suspicion for Drug Testing" as part of *DOT Training for Supervisors*, Asmark Institute, Owensboro, KY, September 9, 2019

"Safe Prescribing of Sedative-Hypnotics" at *MPHP Prescribers' Summit: Controlled Substance Update* June 22, 2018, Pearl, MS

"Safe Prescribing of Sedative-Hypnotics" at *MPHP Prescribers' Summit: Controlled Substance Update* April 13, 2018, Gulfport, MS

"Safe Prescribing of Sedative-Hypnotics" at *MPHP Prescribers' Summit: Controlled Substance Update* March 9, 2018, Oxford, MS

"Case Studies in Controlled Substance Prescribing" at *MPHP Prescribers' Summit: Controlled Substance Update* October 13, 2017, Jackson, MS

"Case Studies in Controlled Substance Prescribing" at *Mississippi State Medical Association Foundation Prescribers' Summit* March 31, 2017, Oxford, MS

"Update on the Prescription Drug Epidemic, Disturbing New Trends & Drug Testing Basics" at *Lafayette County Bar Association's Continuing Legal Education Conference* October 20, 2016, Oxford, MS

"Benzodiazepines: An Update" at *North Mississippi Medical Center's 13th Annual Outcomes Conference* August 25, 2016, Pickwick, TN

"Sedative Hypnotics: Avoiding Prescribing Pitfalls" at *Mississippi Professionals Health Program Prescribers' Summit* June 24, 2016, Gulfport, MS

"Benzodiazepines: Update on Prescribing Trends" at *Mississippi State Medical Association Foundation Prescribers' Summit* April 1, 2016, Oxford, MS

"An Introduction to the Prescription Drug Epidemic", Guest lecturer, *Addiction Counseling Course in the Graduate School of Counselor Education, University of MS*, February 22, 2016, Oxford, MS

"Benzodiazepines: An Update" at *37th Annual Caduceus Retreat & Conference of MS State Medical Association Foundation*, July 11, 2015, Louisville, MS

"An Introduction to the Prescription Drug Epidemic", Guest lecturer, *Addiction Counseling Course in the Graduate School of Counselor Education, University of MS*, February 10, 2015, Oxford, MS

"Prescription Drug Epidemic: Trouble at Home" at *Annual FACT Conference*, November 7, 2014, Tupelo, MS

"Mental Health in the Primary Care Setting" Keynote Address at *North MS Medical Center Outcomes Conference*, August 22, 2014, Pickwick, TN

"Managing Opiate Addicts with Painful Conditions" at *North MS Medical Center Outcomes Conference*, August 21, 2014, Pickwick, TN

PRESENTATIONS/TEACHING (cont.)

"Buprenorphine: The Rest of the Story" at *24th Annual MS Association of Addiction Professionals Conference*, July 22, 2014, Oxford, MS

"Prescription Drug Epidemic: Trouble at Home" at *24th Annual MS Association of Addiction Professionals Conference*, July 22, 2014, Oxford, MS

"Controlled Substance Update" at *MS State Medical Association Foundation Prescribers' Summit*, March 28, 2014, Oxford, MS

"Benzodiazepines: The Good News & Bad News" at *Northwest MS Regional Medical Center Staff Conference*, Dec. 10, 2013, Clarksdale, MS

"Benzodiazepine Update" at *Southern Medical Association Rules, Regulations, & Risks of Prescribing Controlled Substances*, November 15, 2013, Hattiesburg, MS

"Controlled Substances Update: Benzodiazepines" at *Singing River Health System Prescribers' Summit*, November 1, 2013, Moss Point, MS

"Controlled Substances Update: Benzodiazepines" at *MS Professionals Health Program Prescribers Summit*, October 18, 2013, Jackson, MS

"Managing Controlled Substances in MS: Benzodiazepines" at *North MS Medical Center Best Outcomes Conference*, August 22, 2013, Pickwick, TN